IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.2.2002

CORAM :

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR

Writ Petition No.1288 of 1996 and W.M.P.No.2021 of 1996

N.Ganapathy @ N.Ramanathan
also known as N.Kanapathy .. Petitioner

-Vs-
The State of Tamilnadu rep.by
Secretary to Government
Public (P.P.II) Department
Fort.St.George, Madras-9. .. Respondent's

Petition under Article 226 of the Constitution of India praying for the issue of a writ of Mandamus as stated therein.

For Petitioner : Mr.P.Thiagarajan
for M/s.T.R.Rajaraman

For Respondent : Mrs.Thenmozhi Sivaperumal
Addl.Government Pleader

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: O R D E R

This writ petition is by an ex-soldier of Indian National Army (hereinafter referred to as 'I.N.A'). He claims that he joined I.N.A. in 1943 at Batu Pahat, Malaya as it then was, and was trained at Seletar Camp, Singapore and later on posted as Sepoy in the 8th Guerilla Regiment stationed at Ipoh Camp, Malaya. He claims to have been in the active service in the war front and further claims to have been detained at Ipoh as prisoner of war by the Britishers. He submitted his application to the Deputy Secretary to the Government of Tamil Nadu, Public (P.P.II) Department and in support of his application, filed few documents including the certificate issued by the All India I.N.A. Committee. He also submitted his passport, which was dated 15.3.1943, his two photographs along with the fellow soldiers, a certificate given by one M.Chinnakannu, who himself was a soldier of the Indian National Army and detained by the British army along with the petitioner. He also submitted an identity card of the Indian Independence League, Batu Pahat Camp dated 10.5.1942.

2. On the basis of the above documents, the petitioner claimed the pension meant for freedom fighters. His further case is that his case is recommended by the Collector who had conducted the enquiry as also the police officers investigated about his credentials. Further, his case seems to have been rejected by the order dated 20.10.1994. He has, therefore, approached this Court for a writ of mandamus to issue him the pension. He has, along with the writ petition, filed all those documents which have been produced before the Deputy Secretary to the Government, including the last communication dated 20.10.1994 bearing No.63483/A-1/91-5, Public (Political Pension-II) Department, Secretariat.

3. In support of his arguments, the learned counsel points out that all the persons who served in the Indian National Army and who were the prisoners of war of the British Army are entitled to the Freedom Fighters Pension. The learned counsel points out that there was ample evidence in this case to suggest that the petitioner was a genuine freedom fighter as he was a soldier and had actually been a prisoner of war while he was in the active service of I.N.A. The learned counsel further points out that all this evidence has been ignored in the aforementioned communication dated 20.10.1994 and the rejection seems to be on the fanciful grounds that the card submitted by the petitioner bore some corrections and over-writings, and that the certificate issued by the All India I.N.A. Committee bearing No.8/2/9830/EMP dated 11.1.1971 having been solely based on that card could not be honoured and could not be held to be a valid document.

4. On the other hand, the learned Government Pleader, on the basis of the stand taken in the counter affidavit, pointed out that the Government had actually corresponded with the said All India I.N.A. Committee and had found out that the certificate issued by the said Committee was solely based upon the aforementioned card dated 10.5.1942, which suggested that the petitioner was a member of Indian Independence League of Batu Pahat branch. The Government Pleader further suggests that since the card itself was suspicious and was bearing corrections and over-writings, the Government has rejected that evidence and, therefore, the Government was justified in refusing the pension to the petitioner.

5. There can be no doubt that the personnel who have served in the I.N.A. and who were made the prisoners of war are entitled to the grant of freedom fighters pension. There is no dispute on this proposition raised by the Government Pleader also. What is to be seen is as to whether the Government was justified in refusing the pension in the wake of the ample evidence submitted by the petitioner. The stand of the Government is reflected in the counter wherein it is suggested that the said certificate issued by the All India I.N.A. Committee was based solely on the card dated 10.5.1942. The certificate issued by the All India I.N.A. Committee is on record. The certificate does not show that it is based solely on the aforementioned card dated 1 0.5.1942.

6. If a close scrutiny is taken of the certificate dated 11.1.1971, it mentions specifically the regimental number of the

petitioner also as '71218'. It gives the complete home address of the petitioner and it also mentions 'No.8, Guerilla Regiment' as the unit where the petitioner had actually served. Now, if we go to the aforementioned card dated 10.5.2602, which is corresponding to year 1942, the other details like regimental number etc., are not to be found in that card, which details are to be found in the certificate issued by the All India I.N.A. Committee. In the said certificate, the name of the petitioner is described as 'N.Ganapathi', while the card mentioned the name of the petitioner as 'N.Kanapathy'. Once a certificate was issued even on the basis of the card as produced by the petitioner dated 10 .5.1942 by the All India I.N.A. Committee, that was a sufficient proof for the State Government to be convinced. I do not think that the State Government was then justified in going into the genuineness of the card. It is nobody's case that the petitioner was impersonating somebody. There only appears to be a mista ke in the spelling, at some places the petitioner is described as 'Kanapathy', whereas in other places he is described as 'Ganapathi'. It is well known that in Tamil, there is only one letter used for 'Ka' and 'Ga'. The mistake could have been on that count, as for example in one of the certificates dated 15.09.03 i.e., 1943, the petitioner is described as 'N. Kanapathy'. This appears to be a certificate issued by the Indian Independence League. The formal card, probably was issued in the name of ' Ganapathy' and that might have been corrected. But, if it is to be seen closely, there appears to be even initial on that correction. The petitioner has produced the original card as also the photostat copy thereof, where there is a clear initial made and it is not the case of the State Government that it is the petitioner who has tampered with the card. Be that as it may. The certificate issued by the All India I.N.A. Committee was clear enough as they had the necessary details of the services of the petitioner as well as his identity and it is only after the Committee had enquired into the matter that the petitioner seems to have been granted the certificate. It has to be seen that in this certificate the petitioner's character is described as 'very good' while in I.N.A.

7. Now, if we go to the card dated 10.5.1942, these details are clearly missing. Therefore, it cannot be said that the All India I.N.A. Committee relied upon the card exclusively to grant the certificate dated 11.1.1971. Even if the said card was suspicious as there was an over-writing, it is clear that the said over-writing was initialed by someone who corrected the card and it could not be said to be a fake document. Further, even if we go to the extent of saying that the State Government had the necessary authority to check the genuineness of the card, it cannot be said that there is a proper finding regarding the genuineness of that document. In the communication dated 20 .10.1994, all that is stated is that the I.I.L. card has been corrected and that the certificate issued by the All India I.N.A. Committee on the basis of this I.I.L. card could not be considered for the purpose of granting State Freedom Fighters Pension. It is, therefore, obvious that the concerned officer has clearly missed a very important factor and has wrongly concluded that the certificate issued by the All India I.N.A. Committee was only on the basis of the I.I.L. card dated 10.5.1942.

8. The learned Government Pleader placed before me a letter dated 3 1.7.1992 from the files. This purports to be a letter written by one Captain S.S.Yadava, General Secretary, Indian National Army, in which it is suggested that the certificate dated 11.1.1971 bearing No.8/2 /9830 was issued on the basis of the I.I.L. membership Battu Pahat branch card dated 10.5.1942 and the certificate dated 15.9.1943. The obvious reference is to the certificate issued dated 15.9.1943, which has also been issued by the I.I.L. There, there is no overwriting and the petitioner is properly described as 'Shri N.Kanapathy'. In this letter, which is hand written and which bears the stamp of the Indian Independence League, it is clearly certified that the bearer was a member of the Indian Independence League and that he was a volunteer in the Indian National Army. The letter of Captain S.S.Yadava goes on to mention that the claim of the applicant was genuine and was supported by adequate documentary evidence.

9. On the back drop of this letter dated 31.7.1992, when we test the communication dated 20.10.1994, it is obvious that the Deputy Secretary to Government who has passed this order has completely missed the other certificate dated 15.9.1943 as also the other relevant details which have been given in the certificate issued by the All India I.N.A. Committee. It also completely ignores the further certificate given by Captain S.S.Yadava that the claim of the petitioner was genuine. It is obvious that the claim of the petitioner has been rejected on the fanciful grounds without application of proper mind. That communication, of which the State Government is relying upon, cannot therefore be treated as a properly passed order. It is obvious that the claim was genuine, that the petitioner was actually serving in the I.N.A. at the relevant time and was also a prisoner of war. The certificate issued by the All India I.N.A. Committee is a final verdict on that issue. It is besides the other voluminous proof put in by the petitioner like the passport issued in Malaya dated 15.2.2603 (Japanese year), which though not a specific document, goes on to support the petitioner's claim.

10. In my opinion, therefore, the petition must succeed since the petitioner has proved by the proper certificate issued by the All India I.N.A. Committee, which is based on other documents that he was a genuine freedom fighter. The writ petition is accordingly allowed and the Mandamus is issued to grant the petitioner the pension as per the Rules. The Rule is thus made absolute.

22.2.2002
Index : Yes
Website : Yes

kst.
Sd/- Asst.Registrar

// True Copy //

Sub
Asst.Registrar

To:
The State of Tamilnadu rep.by
Secretary to Government
Public (P.P.II) Department
Fort.St.George, Madras-9.

V.S.SIRPURKAR,J.

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